

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Freddie Harris,

Plaintiff,

Hon. Hugh B. Scott

03CV467

Consent

v.

**Decision
&
Order**

Deputy Adala, et al.,

Defendants.

Before the Court is the plaintiff's motion to compel discovery (Docket No. 36) and a motion for judgement as a matter of law (Docket No. 37).

Plaintiff, Freddie Harris ("Harris") brings this action under 42 U.S.C. §1983 claiming that his Eighth Amendment rights were violated based on the defendants' alleged failure to protect him from an attack by another inmate. Harris claims that Deputy Superintendent of Security Adala, Correctional Lieutenant Ficchi and Correctional Sergeant Piccolo violated his constitutional right when they placed him in a cell with an inmate whom they knew had attacked other inmates in the past in the same cell.

The plaintiff served a request for the production of documents on or about March 20, 2005. The discovery request was filed on March 24, 2005. (Docket No. 34). The docket reflects that the defendants responded to the document demand on April 25, 2005. (Docket No. 35).

Notwithstanding this response, the plaintiff has filed the instant motion asserting only the general statement that the defendants' failed to respond. (Docket No. 36 at page 3). The Court notes that in addition to the April 25, 2005 response, the defendants supplemented their response on June 23, 2005. In his reply, Harris identifies two video tapes (cs-501 and cs-504) (Docket No. 41 at page 3) which he alleges contain video footage of some of the defendants making statements regarding their knowledge of violent propensities of the inmate who attacked Harris. (see Amended Complaint at page 7). The defendants have represented that they have produced the videotape related to the incident of January 27, 2003. While this videotape does not contain footage of defendants Piccolo and Ficchi as alleged by the plaintiff, the defendants represent that there "is no other videotape regarding the January 27, 2003 incident." (Docket No. 39 at ¶ 30). The plaintiff has presented the Court with no basis to conclude that the defendants' response in this regard is insufficient.

The only other specific item of discovery mentioned in the plaintiff's reply papers is a request for the "policy or custom concerning the medical procedures when an inmate is injured." (Docket No. 41 at page 4). Once again, the defendants assert that they have provided or will provide the document to the plaintiff. (Docket No. 39 at ¶ 35). To the extent the defendants have not yet done so, they are directed to provide the requested documents to the plaintiff.

The plaintiff also seeks a judgement as a matter of law primarily based upon the defendants' alleged failure to provide the discovery discussed above. The plaintiff has not articulated a basis to grant a judgement as a matter of law in this case. The motion is denied.

Scheduling

This case is will soon be three years old. The following schedule will apply with respect to this matter.

1. All remaining discovery, if any, shall be completed by **May 25, 2006**. Motions to compel, if necessary, shall be filed 30 days prior to that date.
2. Dispositive motions, if any, shall be filed by **June 30, 2006**.
3. A **jury trial** in this matter shall take commence on **September 11, 2006 at 9:30 a.m.** before the undersigned. The filing of dispositive motions will not affect the date of trial.

No extensions of these dates will be granted.

Conclusion

The plaintiff's motion to compel (Docket No. 36) and motion for judgement as a matter of law (Docket No. 37) are denied.

So Ordered.

/s/ Hugh B. Scott

United States Magistrate Judge
Western District of New York

Buffalo, New York
March 27, 2006